IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2037 OF 2005

IN

WRIT PETITION NO.903 OF 2005

Pune Municipal Corporation ..Applicant.

Vs.

M/s.Mahalaxmi Tourism
Development Company Pvt.Ltd.
& Ors. ..Respondents.

...

Mr.R.G.Ketkar for the Applicant.

Mr.A.V.Anturkar for Respondent Nos.1 to 6.

...

CORAM : F.I.REBELLO, J. AND

DR.D.Y.CHANDRACHUD, J.

17th February, 2006.

P.C. :

1. The Petition filed by the Petitioners who are the Respondents herein was disposed of by order dated February 24, 2005. A statement made on behalf of counsel for the Petitioners was incorporated in that order which reads as under :

> "Learned counsel appearing for the petitioners undertakes to deposit the entire octroi amount. He further undertakes to submit bank guarantee of a nationalised bank for the penalty amount to be paid to the Pune Municipal Corporation. On payment of the octroi amount and submission of bank guarantee for penalty, the vehicles in question shall be released."

2. A perusal of the averment in the Petition more specifically paragraph 8 would indicate that the Petition filed was in respect of the buses which had been attached and which was the subject matter. Prayer clause (a) was for a declaration that the attachment was illegal.

3. It appears that the Petitioners subsequent

to this order paid the octroi and penalty for the 10 buses. Consequent upon those buses were released. The Petitioners in the Petition also paid the octroi for other buses, however did not furnish bank guarantee in so far as the other 140 buses.

4. This is an application on behalf of the Respondent in the Petition seeking a direction that the Petitioners in the Petition be directed to furnish a bank guarantee of a nationalised bank for its penalty amount in respect of 140 buses. In the first instance, the application as filed in a disposed of Petition really would not be maintainable. Even however considering the prayer clause we are clearly of the opinion that the order of this Court would only be referable to the subject matter of the Petition which was 10 buses. In the light of that matter, the Application as moved is not maintainable. It further appears that the Applicant Respondent has not given the hearing to the Petitioners in terms of the order of this Court. We direct the Applicant herein to give the hearing to the Petitioners in terms of the order of this Court. The time however is extended. The

original Petitioners to appear before the Commissioner, Pune Municipal Corporation on 1st March, 2006 on which date he would fix the hearing on any subsequent dates. With the above observations the Application is disposed of.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)